

## AMENDMENT

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Please add the following claims.

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99. (New) An animal feed supplement according to claim 77, wherein said dried solid is granulated to produce granules having a substantially uniform uncompacted particle size.

B,  
100. (New) An animal feed supplement according to claim 87, wherein said dried solid is granulated to produce granules having a substantially uniform uncompacted particle size.

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## REMARKS

### *Withdrawal of Claims*

The Examiner indicated that Claims 1-10, 57-76, 86, and 88-98 stand withdrawn from consideration as being drawn to a nonelected invention and species. This is not consistent with the Examiner's previous office action dated July 21, 2000 in which the Examiner withdrew claims 76, 86 and 88-98. The Applicants, in the Response dated April 17, 2000, elected Group I, Claims 1-10, 30, 38, 46 and 55, of which claims 30, 38, 46 and 55 were written as claims 57-87.

Further, this action is not consistent with the text of the Examiner's previous office action in which the Examiner addressed Claims 1-10 and 57-75. As the Examiner is well aware, piecemeal examination should be avoided as much as possible. *See MPEP § 707.07(g)*. Therefore, it is believed that the withdrawal is in error, and correction is earnestly solicited. Since the Applicants are unable to accurately determine which claims are pending in the application, the Applicants hereby requests the provision of a new non-final office action specifically and accurately indicating which claims are currently being prosecuted in the present application.

*35 U.S.C. § 112*

The Examiner rejected claims 77-85 and 87 for failure to particularly point out and distinctly claim the subject matter. However, the Examiner did not provide any reasons therefor. Although the Examiner stated that the reasons therefor "should be clear", the Examiner again does not state even a single reason therefor. As the Examiner is well aware, "wherein a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression." *MPEP § 707.07(g)*. Thus, the Applicants again respectfully requests clarification by the Examiner. If the Examiner is unable to provide such clarification, the rejection should be withdrawn.

*35 U.S.C. § 102(e)*

The Examiner rejected Claims 77-82 and 87 under 35 U.S.C. § 102(e) as being anticipated by Kemp, U.S. Pat. No. 5,908,634. The Applicants respectfully disagree.

Anticipation requires that "the reference must teach every aspect of the claimed invention either explicitly or impliedly." *MPEP §706.02(a)* (emphasis added). Further, "anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1982) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1984) (emphasis added).

The Examiner quotes Col. 3, Lines 23-34 for the support of fermentation by-products, which states "The molasses may be molasses obtained from a sugar mill (or be a by-product of molasses fermentation)". However, as claimed in Claim 77, the present invention involves culturing an organism producing an antibiotic in a fermentation medium to produce a fermentation broth comprising said antibiotic. It is the fermentation broth which is reduced to obtain fermentation solids comprising said antibiotic. Nowhere in the Kemp reference is taught or suggested such a

fermentation product as claimed. Thus, the Kemp reference discloses a product which is dissimilar to the present invention.

Additionally, the Kemp reference does not teach or suggest adding an additional quantity of said antibiotic to the fermentation broth to increase the antibiotic activity of said fermentation broth.

Therefore, it is respectfully submitted that a *prima facie* case of anticipation has not been shown by the Examiner, and withdrawal of the rejection is respectfully requested.

*35 U.S.C. § 102(b)*

The Examiner rejected Claims 77-85 and 87 under 35 U.S.C. § 102(b) as being anticipated by Klothen, U.S. Pat. No. 4,447,421. The Applicants respectfully disagree.

Again, anticipation requires that "the reference must teach every aspect of the claimed invention either explicitly or impliedly." *MPEP* §706.02(a) (emphasis added). Nowhere in the Klothen reference is disclosed the step of adding an additional quantity of an antibiotic to a fermentation broth to increase the antibiotic activity of the fermentation broth, as claimed in the present application. By adding an additional amount of antibiotic, greater levels of an antibiotic may be achieved than through a fermentation process utilized alone. Additionally, even if achieving the desired level of antibiotic activity would not require the additional of additional antibiotic, it may still be preferable to add the additional antibiotic in order to save time and yet achieve the cost reduction of the fermentation process. For example, the fermentation process may show increased activity over the initial stages, but then result in slower fermentation as the levels of the antibiotic increase in the broth. Therefore by utilizing the present invention, a large quantity of antibiotic may be generated in a short amount of time during the periods of greatest production, and then fortify the broth containing the antibiotic with additional amounts of antibiotic, which may be provided from other fermentation processes, *See Page 14, Line 25 to Page 17, Line 3*, to achieve the desired

activity.

Additionally, in Claim 77, an animal feed supplement is produced from a broth by reducing and drying. However, in the Klothen reference, a process is disclosed wherein a particulated animal feed is formed by combining a drug with a compressible carrier, followed by blending the mixture, compressing the mixture, and granulating the composition. Specifically required both in the claims and specification of the Klothen reference is the compaction step of the process. In the present invention, a substantially dustless animal premix composition is provided without the necessity of the compaction step of the Klothen reference.

Thus, the Klothen reference attempts to overcome the problem of dust by compaction of the premix which is an unnecessary and undesirable step in practicing the present invention, and would result in a structural composition of the product which is different than the present invention. The Klothen reference provides a compacted animal feed which may result in problems that are specifically addressed by the present invention, as shown in the following:

“Dust Particles that adhere to feed mills or other feed processing equipment or that may be carried away in dust collection system may contain significant quantities of the active ingredient. This may cause the feed mixtures to have a lower concentration of the medicament desired. Dust adherent to the feed processing equipment and dust collected in a dust collection that is recycled in subsequent batches may cause the feed mixtures produced in later batches to have a higher concentration of the active ingredient than desired, or may cause carry over of the drug to feed batches which are not intended to contain the drug. *Application, Page 2.*

Therefore, by utilizing the present invention, a particulate free of cross-contamination may be produced without the contaminating compaction step of the Klothen reference. In this way, the particle of the present invention is not similar to the particle of the Klothen reference. As shown by the present invention, and specifically claimed in Claims 99 and 100, an uncompacted particle may

be provided by utilizing the present invention.

Further, the Examiner refers to antibodies fermentation solids meets the instant claim 77 fermented solid with added antibiotic (Col. 3, lines 33-43). The Applicants disagree. The Klothen reference teaches away from the present invention. For example, as stated in the summary of the invention of Klothen reference:

[O]ther attempts relate to the preparation of wet aggregates followed by granulation and subsequent drying of the granules .... The latter process is generally too costly for this type of application and also, because of the frequent use of water, causes stability problems with many drugs.

*Id.* at Col. 2, Ln 4-6, 11-14.

In the present invention, a "wet" process may be performed to arrive at a substantially dustless granular feed premix composition without stability problems. For example, referring to claims 66 and 77, an organism producing an antibiotic is cultured in a fermentation medium to produce a fermentation broth which is then reduced to obtain fermentation solids comprising said antibiotic. Thus, the fermentation solid comprises the antibiotic, wherein in the Klothen reference, an antibiotic is merely added to animal feed and then compacted.

Therefore, it is respectfully requested that the rejection be withdrawn.

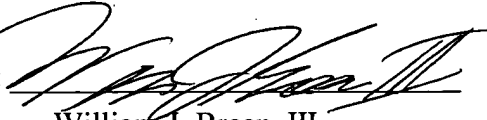
## CONCLUSION

In light of the forgoing, reconsideration and allowance of the claims is earnestly solicited.

Respectfully submitted,

Winstrom et al.

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By: 

William J. Breen, III

Reg. No. 45,313

SUITER & ASSOCIATES PC

11516 Nicholas St., Suite 205

Omaha, NE 68154

(402) 496-0300      telephone

(402) 496-0333      facsimile